

Bail Slip

The Appellant/Accused namely 1 Gopalakrishnan, S/o Gunasekaran (Sole accused in S.C.No.60/2009 on the file of the District & Sessions Judge, Nagapattinam) was directed to be released on bail as per the order of this Court dated 09.03.2011 in Crl.MP.No.1/2011 in Crl.A.No.130/2011 on the file of this Court.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 21.01.2019

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.A.No.130 of 2011

Gopalakrishnan ... Appellant/Accused

Vs

State rep. by
Inspector of Police,
Pudupattinam Police Station,
Nagapattinam District. ... Respondent/Complainant

Criminal Appeal filed under Section 374(2) Cr.P.C praying to set aside the order dated 15.02.2011 passed by the District and Sessions Judge, Nagapattinam in S.C.No.60 of 2009 in Crime No.299 of 2006 on the file of the Inspector of Police, Pudupattinam Police Station, Nagapattinam District.

For Appellant : Mr.K.M.Subramaniam

For Respondent : Mrs.P.Kritika Kamal, GA (Crl. Side)

J U D G M E N T

This Criminal Appeal has been filed against the judgment of conviction and sentence dated 15.02.2011 passed by the District and Sessions Judge, Nagapattinam in S.C.No.60 of 2009.

2.It is the case of the prosecution that, on 10.08.2006, around 02.00 p.m., the appellant quarreled with his wife Amudha in his house and in a fit of anger, held her by her neck and dashed her head on the door frame, due to which, she suffered serious injury resulting in death. In order to conceal the offence, it is alleged that he cut the nylon saree that was already tied to the ceiling and was being used as a cradle and created a scene, as if she had attempted to commit suicide.

3.On the complaint (Ex.P1) lodged by Soundararajan (P.W.1), the father of Amudha, Manimaran, the Sub-Inspector of Police, registered a case in Crime No.399 of 2006 under Section 302 IPC and prepared the printed FIR (Ex.P7). The investigation of the case was taken over by Kalaimani (P.W.8), Inspector of Police, who went to the place of occurrence and prepared the Observation Mahazar (Ex.P17) and Rough Sketch (Ex.P8) in the presence of Muthaiyan (P.W.4) and Velavan (not examined). She had the place of occurrence photographed and negatives were marked as M.O.7 Series and photographs were marked as M.O.8 Series. She seized the nylon saree pieces from the ceiling and from the floor under cover of Mahazar (Ex.P3) and the two pieces of the same saree were marked as M.O.9 and M.O.10. She conducted inquest over the body of the deceased, prepared the Inquest Report (Ex.P9) and sent the body to the Government Hospital for postmortem through HC 428. Dr.Lakshmi (P.W.6) performed autopsy on the body of the deceased and in her evidence as well in the Postmortem Certificate (Ex.P5), she has stated as follows :

"EXTERNAL INJURIES

- 1.Contusion over the occiput region of skull
- 2.Abrasion over left arm 5 x 2 cms

INTERNAL EXAMINATION

Adbomen - stomach empty
Intestine - contains clear fluid and distended with gas, livers, spleen,
kidneys - pale
Uterus - Bulky on cut section a small gestation sac seen
Thorax - No fracture ribs lungs-pale, heart-pale (contains fluid blood)
No foreign body in trachea
Hyoid bone intact
Skull - No fracture, Covering normal

BRAIN

Contusion and hemotoma over cortex region extending from the parietal region to occipital region of cortex with bleeding from the saggital sinus seen from vertex to occipital region of skull.

Post-mortem concluded at 01.30 p.m. Liver, stomach, kidneys, intestine, send for chemical analysis report. The above five articles were examined but poison was not detected in any of them.

The deceased would have appeared probably 16-24 hours prior to autopsy due to shock due to injury to vital organs."

4. The Investigating Officer arrested the appellant on 12.08.2006 and recorded his confession statement in the presence of witnesses, viz., Subramanian (P.W.5) and Srinivasan (not examined). After recording the statements of witnesses and collecting the postmortem report, etc., the Investigating Officer filed Final Report in P.R.C.No.25 of 2006 before the Judicial Magistrate, Seerkazhi under Sections 302 and 201 IPC against the appellant.

5. On the appearance of the appellant, the provisions of Section 207 Cr.P.C. were complied with and the case was committed to the Court of Session in S.C.No.60 of 2009. The Court of Session framed charges under Sections 302 and 201 IPC against the appellant. When questioned, the appellant pleaded 'not guilty'.

6. To prove the case, the prosecution examined eight witnesses, marked ten exhibits and ten material objects. When the appellant was questioned under Section 313 Cr.P.C. on the incriminating circumstances appearing against him, he denied the same. The appellant also submitted written explanation under Section 313 Cr.P.C., wherein, he has stated that on the date of occurrence, he left his house at Seerkazhi at 03.00 a.m. and went to Chennai; around 01.00 p.m., he received information via his mobile phone about the death of his wife and so, he returned to Seerkazhi and reached home around midnight. He has further stated that his was a love marriage and there was no misunderstanding with his wife; since his wife's parents were not agreeable for the marriage, they have foisted the present case on him.

7. After considering the evidence on record and hearing either side, the trial Court, by judgment dated 15.02.2011, in S.C.No.60 of 2009, has acquitted the appellant of the charge under Section 302 IPC, but, convicted him under Sections 304 (II) and 201 IPC and sentenced him as follows :

Provision under which convicted	Sentence
Section 304(II) IPC	five years rigorous imprisonment and fine of Rs.1,000/- in default, to undergo one year simple imprisonment
Section 201 IPC	one year rigorous imprisonment and fine of Rs.500/- in default, to undergo three months simple imprisonment

Challenging the conviction and sentence, the appellant is before this Court.

8.Heard Mr.K.M.Subramanian, learned counsel for the appellant and Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) appearing for the State.

9.Soundararajan (P.W.1), father of the deceased, in his evidence, has stated that while his daughter was studying in school, she fell in love with the appellant and they got married; on hearing the news of his daughter's death, he went to the appellant's village and saw his daughter's body in the appellant's house; the appellant had caused her death and had made it appear as if she attempted to commit suicide; thereafter, he lodged the complaint (Ex.P1).

10.In the cross-examination, Soundararajan (P.W.1), has stated that after the appellant got married to his daughter, there was cordial relationship between the two families. He has further stated that when he went to the house of the appellant on hearing the news of his daughter's death, he did not find the appellant there, as he had ran away.

11.Rani (P.W.2), mother of the deceased, in her evidence, has stated that she belongs to Thillainatham and the appellant belongs to Aarpakkam village; while her daughter was studying in the Government School, Aarpakkam, she fell in love with the appellant and got married to him; thereafter, on the intervention of the village elders, she (P.W.2) accepted the marriage and there was cordial relationship between the two families; after marriage, the appellant settled down with his wife in Aarpakkam village; on hearing the news about the death of her daughter, she came to the appellant's house and found her daughter's body lying on the floor; she also saw the injury on the backside of her daughter's head; thereafter, the complaint was lodged to the police.

12. In the cross-examination, Rani (P.W.2), has stated that she received information about her daughter's death around 4.00 p.m. and they reached the village of the appellant at 5.00 p.m. She also admitted that she did not approve their marriage initially, but, later, she got reconciled to it.

13. Latha (P.W.3) was declared hostile. However, in her examination-in-chief, she has stated that she lives in Aarpakkam village; she knows the accused, the deceased, Soundararajan (P.W.1) and Rani (P.W.2); her house is next to the house of the accused; the appellant and Amudha were living happily; at the time of Amudha's death, she (P.W.3) was at work; therefore, she does not know how Amudha died; around 01.30 p.m., when she went to her house, she saw both of them there; thereafter, at the request of the Prosecutor, she was declared hostile. To the pointed questions, she has stated that around the time of incident, the appellant was there in his house.

14. Muthaiyan (P.W.4), who is the relative of Soundararajan (P.W.1) and Rani (P.W.2), has stated that he hails from Thillainatham village; he knows the appellant and the deceased Amudha; the appellant and Amudha fell in love when they were in school and they got married; after marriage, they settled down in Aarpakkam village; on 10.08.2006, Amudha died; he received the information about Amudha's death between 02.00 p.m. and 03.00 p.m. and went to Aarpakkam; in the appellant's house, he observed a torn portion of the saree tied in the ceiling and the other half of the saree was found on the floor; he also observed an injury on the right chest and on the backside of the head of the deceased; he also observed blood stains on the door frame with hair follicle; therefore, he went along with Soundararajan (P.W.1) and lodged the complaint (Ex.P1) to the police around 4'o clock on that day; he signed as a witness in the Observation Mahazar (Ex.P2) and in the Seizure Mahazar (Ex.P3). He has stated that after the complaint was given, the police came to the place of occurrence; the appellant was not there, when he went to the house. He has denied the suggestion that the case has been foisted on the appellant, because, the parents of the deceased did not approve her marriage with the appellant.

15. M.Subramanian (P.W.5), Village Administrative Officer, in his evidence, has stated that on 12.08.2006, the police arrested the appellant around 10.00 a.m. and his statement was recorded. In the cross-examination, he has stated that he did not know the appellant earlier and only after his arrest, he gave the confession statement. He denied the suggestion that there was no recovery effected as deposed by him, in his chief-examination.

16.Pursuant to the disclosure made by the appellant, the police recovered Aruvalmanai (M.O.1) and a stick (M.O.2) under Mahazar (Ex.P4).

17.Dr.Lakshmi (P.W.6), has stated in her evidence that, she conducted autopsy on the body of the deceased Amudha and issued the Postmortem Certificate (Ex.P5). The injuries noted by her have already been set out above.

18.In her cross-examination, Dr.Lakshmi (P.W.6) admitted that the ligature mark around the neck of a person, who commits suicide by hanging, will not necessarily be there in all cases; such ligature mark will be available depending upon the cloth used for hanging. She has further stated that while attempting to commit suicide by hanging, the person will wriggle fiercely with his hands and legs, on account of which, there is possibility of the cloth or rope tearing/cutting, resulting in the person falling and sustaining the injuries noted by her in the Postmortem Certificate. To a pointed question posed by the trial Judge, she has stated that depending upon the nature of the cloth, there will be bruises around the neck.

19.Mr.K.M.Subramaniam, learned counsel for the appellant contended that there is absolutely no material to link the appellant with the crime. He contended that the evidence of Latha (P.W.3) that she saw the appellant with the deceased, around the time of the incident, was not put to the appellant, by the trial Court under Section 313 Cr.P.C. and therefore, this circumstance cannot be held against the appellant. He also submitted that in the Inquest Report, the dead body of Amudha was first seen by Alamelu, but, the said Alamelu was not examined as witness. He placed strong reliance on the answers given by Dr.Lakshmi (P.W.6) that the injury on the backside of Amudha's head would have been sustained, after the saree used by Amudha for hanging got torn.

20.Per contra, Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) submitted that since Latha (P.W.3) was turned hostile, the trial Court had not questioned the appellant under Section 313 Cr.P.C. on her evidence.

21.In the opinion of this Court, just because a witness is declared hostile, the entire evidence cannot be thrown overboard. Even before the amendment that was brought to Section 154 of the Indian Evidence Act, 1872, the law prevailing then was, the evidence of a hostile witness should not be completely jettisoned and such of the portions that are consistent with the case of the prosecution can be relied upon.

Had the prosecution proved the presence of the appellant at and around the time of the incident, then, in the absence of the appellant discharging the burden under Section 106, *ibid*, criminal liability can be fastened on him. Though this Court has the power to examine the appellant under Section 313 Cr.P.C. qua the evidence of Latha (P.W.3), yet, this power should not be resorted to as a matter of routine to fill up the lacuna and cause prejudice to the appellant. That apart, non-examination of Alamelu, who had first seen the dead body of Amudha is fatal because, she would have spoken about the presence or absence of the appellant in the house, at the time when she saw the body.

22.It must be borne in mind that the appellant has given written explanation under Section 313 Cr.P.C., wherein, he has clearly stated that he left his house at 03.00 a.m. for Chennai and on hearing the news of his wife's death around 01.00 p.m., he returned to the village late night. Even in the complaint (Ex.P1) given by PW1, it is stated that the appellant would go to Chennai for borewell digging work.

23.It is the specific case of the prosecution that the appellant was arrested by the police only on 12.08.2006 at Puthur junction, whereas, Muthaiyan (P.W.4), has stated in the cross-examination that the appellant was arrested on the same day (10.08.2006) from the house of his neighbour. This contradiction, thus, casts a serious doubt on the prosecution theory that the appellant was responsible for the death of Amudha. In a case predicated on circumstantial evidence, motive assumes significance. In this case, the evidence of all the witnesses show that the appellant was in love with Amudha and got married to her and was living separately in Aarpakkam village. There is no material to show that there was matrimonial discord between the spouses. In fact, the parents of Amudha have not stated a word about any harassment of Amudha by the appellant. In such view of the matter, the appeal deserves to be allowed.

In the result, this appeal is allowed and the judgment of conviction and sentence dated 15.02.2011 passed by the District and Sessions Judge, Nagapattinam in S.C.No.60 of 2009 is set aside. The bail bonds are discharged and the fine amount paid, if any, shall be refunded.

Sd/-

Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

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To

1. The Judicial Magistrate, Sirkali, Nagapattinam District.
2. -do- The Chief Judicial Magistrate, Nagapattinam.
3. The District and Sessions Judge, Nagapattinam.
4. - do- The Principal Sessions Judge, Nagapattinam
5. The Inspector of Police, Pudupattinam Police Station, Nagapattinam District.
6. The Superintendent of Police, Central Prison, Trichy.
7. The District Collector/District Magistrate, Nagapattinam.
8. The Director General of Police, Mylapore, Chennai-4
9. The Public Prosecutor, High Court, Madras.
10. The Section Officer, Crl. Section Records, High Court, Madras.

CRL.A.No.130 of 2011

BR (CO)
GMY (04/03/2019)



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